

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 84 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BIPINBHAI VITHALBHAI PATEL

Versus

STATE OF GUJARAT  
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Appearance:

MR SR SHAH for Petitioner

MS MANISHA LAVKUMAR, AGP for Respondents  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/02/2001

#### ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the orders dated 9.10.1984 (Annexure "C") and 28.10.1986 (Annexure "E") passed by the Entertainment Tax Collector, Panch Mahals at Godhra under the provisions of the Entertainment Tax Act, 1977 (hereinafter referred to as "the Act").

2. The controversy is in respect of tax exemption

claimed by the petitioner in respect of certain Gujarati movies. It appears that at the initial hearing before the Collector, the petitioner produced tax exemption certificates only for two movies viz. Jamna Bani Jagdamba and Ma Kali Pavavali but tax exemption certificates were not produced in respect of certain other Gujarati movies. Mr SK Nanda, the then Entertainment Tax Collector, Godhra passed the order dated 9.10.1984 holding that the petitioner had committed the breach of Section 30 of the Act by not paying the entertainment tax in respect of three feature films viz. Jivi Rabaran, Amar Devidas and Mahendi no rang and that no tax exemption certificates were produced for the same. The Collector accordingly quantified the entertainment tax to be recovered from the petitioner at Rs.27,042-23 for the period in question. It appears that thereafter the Deputy Commissioner of Entertainment Tax, Surat addressed a letter dated 27.5.1985 to the Entertainment Tax Collector, Panch Mahals at Godhra pointing out certain mistakes in the calculation of the entertainment tax to be recovered from the petitioner and as per the communication the amount required to be recovered from the petitioner was much larger than the amount determined by the order dated 9.10.1984 at Annexure "C". It appears that thereafter the petitioner was again called upon to appear before the Entertainment Tax Collector and ultimately the Collector passed the impugned order dated 28.10.1986 (Annexure "E") calling upon the petitioner to pay the entertainment tax to the tune of Rs. 96,105-49, in modification of the order dated 9.10.1984 passed earlier. It is the aforesaid orders dated 9.10.1984 and 28.10.1986 at Annexures "C" and "E" respectively which are challenged in this petition.

3. At the hearing of the petition, Mr SR Shah, learned counsel for the petitioner states that the petitioner had paid the amount of Rs.27,042-23 as determined by the Collector's order dated 9.10.1984. He further submits that such an order could not have been passed by the Collector as it was only the Mamlatdar who can pass such an order as the prescribed authority in view of the provisions of Section 32 of the Act. Mr Shah has relied upon the Supreme Court decision in 1984 (1) SCC 375 (386). Mr Shah has further submitted that in any view of the matter, once Mr SK Nanda, the then Entertainment Tax Collector passed the order dated 9.10.1984 (Annexure "C"), the successor had no authority or jurisdiction to re-open the matter and pass another order dated 28.10.1986 demanding the amount of Rs.96,105-49 in substitution of the previously determined amount of Rs.27,042-23. Mr Shah has further submitted

that in respect of Abil Gulal, the same was not mentioned in the show cause notice and even then the final order purports to foist tax liability on the petitioner in respect of the said movie. Mr Shah has submitted that the Collector has no power of review under the statute and that at the most, the Government could have taken the matter in suo motu revision under Section 13 of the Act.

4. On the other hand, Ms Manisha Lavkumar, learned AGP has opposed the petition and has submitted that the petitioner was required to produce not only the exemption certificates in respect of the concerned movies, but the petitioner was also required to satisfy the authorities that the conditions stipulated in the exemption orders were complied with. It is submitted that for instance the exemption orders stipulate not only the period of exemption but also the number of weeks for which such tax exemption would be available and that, therefore, if the petitioner does not produce necessary details and certificates from the distributor of the feature films to show whether the tax exemption claimed by the petitioner was within the quota of exemption weeks granted in respect of the film concerned, the petitioner would not be entitled to get such exemption merely on the ground that the exemption order was passed by the Government in respect of that particular film. It is further submitted that since the Collector had committed mistakes in calculating the entertainment tax due from the petitioner on account of non-compliance with the provisions of Section 30 of the Act, it was open to the Collector to rectify the mistake and that ample opportunity was given to the petitioner before passing the impugned order. It is further submitted that at the previous hearing before the Collector when the order was passed on 9.10.1984, the petitioner had stated that he would produce the tax exemption certificates in respect of the other movies also, but such tax exemption certificates were not produced and, therefore, also the Collector was justified in re-opening the issue.

5. Having heard the learned counsel for the parties, it appears to the Court that the questions whether the petitioner had rightly availed of the tax exemption or the amounts of entertainment tax due from the petitioner in respect of the concerned movies were correctly quantified or whether the conditions stipulated in the tax exemption order were complied with or not are all of questions of fact which are required to be looked into by the authorities. Unfortunately, however, on the one hand, the petitioner himself did not produce the relevant exemption certificates at the relevant time before the

Collector and similarly the impugned orders do not disclose as to how the amounts determined by the Collector have been worked out. It would, therefore, be just and proper to remand the matter to the Entertainment Tax Collector, Panch Mahals at Godhra, who will issue a fresh show cause notice to the petitioner setting out the grounds on which the previous order dated 9.10.1984 was sought to be modified or revised. The petitioner shall also be given an opportunity to represent his case in writing as well as orally and thereafter the Entertainment Tax Collector shall pass the final order in accordance with law.

6. It is required to be mentioned at this stage that according to Mr Shah for the petitioner, the prescribed authority was the Mamlatdar and, therefore, the matter should be remanded to the Mamlatdar.

The Court is, however, not inclined to adopt this course of action for the simple reason that since the Mamlatdar is an authority subordinate to the Entertainment Tax Collector and the Collector is the higher authority in the hierarchy of authorities under the Entertainment Tax Act, looking to the passage of more than 14 years since the impugned order was passed, and considering the fact that what is being set aside is the impugned order of the Collector, it would be in the fitness of things if the Collector himself applies his mind to the controversy involved in this case and renders his decision as expeditiously as possible. Of course, the petitioner will be at liberty to raise all contentions available to him at such hearing.

7. In view of the above discussion, the impugned order dated 28.10.1986 (Annexure "E") is quashed and set aside with liberty to the Entertainment Tax Collector, Panch Mahals at Godhra to issue a fresh show cause notice to the petitioner setting out the grounds on which the previous order dated 9.10.1984 was sought to be modified or revised. The petitioner shall be given an opportunity of submitting his reply to the show cause notice and also a reasonable opportunity of personal hearing and thereafter the matter shall be decided in accordance with law as expeditiously as possible and in any case within a period of three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. It goes without saying that the petitioner shall co-operate with the authorities for expeditious disposal of this matter.

Rule is made absolute to the aforesaid extent

with no order as to costs.

(M.S. Shah, J.)

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